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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,635	10/24/2003	Scott Davis	234.1007.01	8886
22883	7590	02/08/2005	EXAMINER	
SWERNOFSKY LAW GROUP PC P.O. BOX 390013 MOUNTAIN VIEW, CA 94039-0013			WHITE, DWAYNE J	
			ART UNIT	PAPER NUMBER
			3745	

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/693,635	DAVIS, SCOTT	
	Examiner	Art Unit	
	Dwayne J White	3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 24 October 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 2-31 is/are allowed.
- 6) Claim(s) 1 and 32 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 October 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, claim 1 does not recite any structure. Therefore, one of ordinary skill in the art cannot interpret the metes and bounds of the claim so as to understand how to avoid infringement. See Morton Int'l, Inc. v. Cardinal Chem. Co., 5 F.3d 1464, 1470, 28 USPQ2d 1190,1195 (Fed. Cir. 1993). Moreover, the claim must provide a clear measure of what applicants regard as the invention so that it can be determined whether the claimed invention meets all the criteria for patentability and whether the specification meets the criteria of 35 USC 112, first paragraph with respect to the claimed invention

Claim 32 similarly does not recite any structure. Therefore, one of ordinary skill in the art cannot interpret the metes and bounds of the claim so as to understand how to avoid infringement. See Morton Int'l, Inc. v. Cardinal Chem. Co., 5 F.3d 1464, 1470, 28 USPQ2d 1190,1195 (Fed. Cir. 1993). Moreover, the claim must provide a clear measure of what applicants regard as the invention so that it can be determined whether the claimed invention meets all the criteria for patentability and whether the specification meets the criteria of 35 USC 112, first paragraph with respect to the claimed invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Epstein et al. (5,932,940). As far as claims 1 and 32 are definite Epstein et al. disclose a micro-gas turbine. Since there are no structural requirements cited in the claims that establish the meets and bounds of the apparatus, it is the position of the Examiner that micro turbine of Epstein et al. anticipates the turbine of claims 1 and 32.

CONCLUSION

Allowable Subject Matter

Claims 2-31 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

The instant invention is directed towards and unobvious improvement in the micro pump art. Specifically, the heteroscopic pump, as defined by Applicant, comprises a moving surface and a plurality of turbine blades spaced apart by a distance comparable to a mean free path distance of the gas. While it is known in the micro pump art to utilize openings in the working surface that have a radius equal to or less than the mean free path length of the gas, as taught by US Patent 5,871,336 to Young and US Patent 6,533,554 to Vargo et al., either of the references have

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moving surfaces. In fact, the mode of operation for pumping involves creating a temperature difference between the ends of flow tubes in the working surface.

Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent Application Publication 2004/0179946 to Gianchandani et al. discloses a micro-machined device where the channels in the device operate with a Knudsen number less than 10.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwayne J White whose telephone number is (571) 272-4825. The examiner can normally be reached on 7:30 am to 5 pm T-F and alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look can be reached on (571) 272-4820. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dwayne J. White
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2/7/05